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Llywodraeth Cymru
Welsh Government

Mark Isherwood MS
Chair of the Public Accounts and Public Administration Committee
Welsh Parliament
Cardiff Bay
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28 October 2024

Dear Chair,

Cabinet Manual and Ministerial Code

Thank you for your letter of 15 October following your evidence session with the Permanent Secretary.

I am sorry that I was not able to join the Permanent Secretary for the evidence session and I am grateful for your understanding of the circumstances. I am pleased to have the opportunity here to respond to the questions which the Committee had intended to put to me at the session.

1. Were you acting as an independent adviser under the terms of the Code when you investigated whether the former Deputy Minister for Arts, Sport and Tourism had breached the Ministerial Code. If so, how were you appointed.

Part of my role in the Welsh Government, to which I have been appointed by the Permanent Secretary, is to advise ministers on the application of the Ministerial Code and, when requested to do so by the First Minister, to investigate an alleged breach of the Code. As the Permanent Secretary said in his evidence session, I carry out this function independently and objectively, in accordance with the principles of the Civil Service Code. The First Minister cannot, and does not seek to, direct or influence me in the advice that I give or, where I am asked to carry out an investigation, in the way in which I conduct that investigation and the conclusions that I reach.

In that sense, therefore, I was acting as an independent adviser but did not need to be appointed to undertake that particular investigation because it was already a part of my role. I was simply requested to do so by the First Minister.



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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding

However, I think that when the Ministerial Code refers to an “independent adviser” it has in mind particularly someone who is external to the Welsh Government and who is appointed by the First Minister specifically to investigate an allegation that there has been a breach of the Code. I was not acting in that role.

2. On 23 May you told the Committee you provided advice over the phone about a potential breach of the Code by the then Economy Minister. You said the advice was written up on your behalf. Were you acting as an independent adviser under the Code and if so, how were you appointed.

I was acting under the same arrangements as I have described in the previous answer.

3. If not acting as an independent adviser, in what capacity did you provide advice about the former Economy Minister and who commissioned the advice.

I was acting under the arrangements that I have described in my answer to question one. The advice was commissioned by the then First Minister. Before I responded with my advice, I sought and received assurances that the former Economy Minister had not had any involvement with the funding decisions made by the Development Bank of Wales.

4. Why was your report about the former Deputy Minister for Arts, Sport and Tourism published but not your advice about the former Economy Minister; does this suggest inconsistencies in the approach, since paragraph 1.7 of the Ministerial Code notes the findings of the independent adviser will be published.

These were decisions of the First Minister at the time, rather than decisions made by me. My understanding of the position was that the then First Minister took the view that the advice which he received in respect of the Ministerial Code should normally not be disclosed, as is the usual practice with advice from the civil service to ministers. On occasions, however, the First Minister felt that it would be in the public interest for my report or advice to be made public. The Committee will recall that the then First Minister did make public that he had asked me for advice on whether the former Economy Minister had broken the Ministerial Code and that my advice was that he had not done so.

5. You confirmed no leak inquiry was commissioned or undertaken by the Welsh Government in relation to the recent case of the former Minister for Social Partnerships, but the former First Minister requested and received advice about the process for handling a breach of the Ministerial Code. Can you explain the interaction between the Ministerial Code and leak inquiries.

There is no necessary connection between the two. The Permanent Secretary may commission a leak inquiry if they believe that there has been an unauthorised disclosure of official information, and the Permanent Secretary would normally consult the First Minister before doing so. The First Minister may ask the Permanent Secretary to undertake a leak inquiry. But the Permanent Secretary is not obliged to commission a



leak inquiry every time they believe that there may have been an unauthorised disclosure, nor is the First Minister obliged to ask for a leak inquiry in those circumstances.

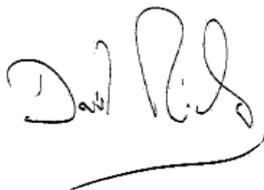
The Ministerial Code sets out the standards and conduct expected of ministers and where the First Minister believes that a minister may not have adhered to those standards then they may ask the Permanent Secretary - or myself, on behalf of the Permanent Secretary – to conduct an investigation, But, again, the First Minister is not obliged to do so.

6. Before 2021, the Ministerial Code gave no role to the Permanent Secretary and other officials for the investigation of breaches of the Ministerial Code. Versions of the Code between 2007 and 2016 specifically said "it is not the role of the Permanent Secretary or other officials to enforce [the Code] or to investigate Ministers". Can you explain what prompted this change, and why this was deemed appropriate.

I do not think that it was ever the intention of the earlier versions of the Ministerial Code to exclude the possibility of the First Minister turning to the Permanent Secretary or other officials for advice in relation to the Code or for the investigation of alleged breaches. While I was not privy to discussion around the content of the Code between 2007 and 2016, I should think that the references quoted were to make clear that ministers are not accountable to the Permanent Secretary for their adherence to the Code and that it would not be appropriate for the Permanent Secretary, or any other civil servant, to seek to investigate the First Minister or any other minister, on their own initiative. This remains the case - any investigation by the civil service of an alleged breach of the Code has to be done at the request of the First Minister.

I hope that this information is helpful to the Committee.

Yours sincerely,



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